

By the Committee on Criminal Justice; and Senators Posey, Cowin, Futch, Sullivan, Wise, Saunders, Miller, Peaden, Carlton, Smith, Lawson, Pruitt and Laurent

307-2079-02

1 A bill to be entitled
 2 An act relating to citrus canker; amending s.
 3 581.184, F.S.; revising the definition of
 4 citrus trees that are exposed to infection from
 5 the citrus canker bacteria; providing for the
 6 removal and destruction of infected citrus
 7 trees and citrus trees exposed to infection;
 8 providing for notice of removal by immediate
 9 final order; providing requirements for an
 10 immediate final order; requiring certain
 11 information to be provided to a property owner;
 12 deleting certain duties of the Department of
 13 Agriculture and Consumer Services; authorizing
 14 chief law enforcement officers to perform
 15 certain duties; amending s. 933.02, F.S.;
 16 providing grounds for issuance of search
 17 warrants relating to the spread of citrus
 18 canker; amending s. 933.07, F.S.; authorizing
 19 the department to obtain a search warrant and
 20 requiring a court proceeding prior to the
 21 issuance of such search warrant; providing for
 22 repeal and review of s. 581.184(1)(b), F.S.,
 23 relating to definition of the term "exposed to
 24 infection"; providing effective dates.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Section 581.184, Florida Statutes, is
 29 amended to read:
 30 581.184 Adoption of rules; citrus canker eradication;
 31 voluntary destruction agreements; ~~buffer zone~~---

1 (1) As used in this section, the term:

2 (a) "Infected or infested" means citrus trees
3 harboring the citrus canker bacteria and exhibiting visible
4 symptoms of the disease.

5 (b) "Exposed to infection" means citrus trees located
6 within 1,900 feet of an infected tree harboring the citrus
7 canker bacteria due to their proximity to infected citrus
8 trees, and which do not yet exhibit visible symptoms of the
9 disease but which will develop symptoms over time, at which
10 point such trees will have infected other citrus trees.

11 (2) The department shall remove and destroy all
12 infected citrus trees and all citrus trees exposed to
13 infection. Notice of the removal of such trees, by immediate
14 final order, may be provided to the owner of the property on
15 which such trees are located. An immediate final order issued
16 by the department pursuant to this section shall notify the
17 property owner that the citrus trees that are the subject of
18 the immediate final order will be removed and destroyed unless
19 the property owner, no later than 10 days after delivery of
20 the immediate final order pursuant to subsection (3), requests
21 and obtains a stay of the immediate final order from the
22 district court of appeal with jurisdiction to review such
23 requests. The property owner shall not be required to seek a
24 stay of the immediate final order by the department prior to
25 seeking the stay from the district court of appeal.

26 (3) Any immediate final order issued by the department
27 pursuant to this section:

28 (a) May be delivered in person, by certified mail, or
29 by attaching the order to a conspicuous place on the property
30 on which a citrus tree to be removed is located.

31

1 (b) Is not required to be adopted by the department as
2 a rule.

3 (4) Simultaneously with the delivery of an immediate
4 final order, the department shall also provide the following
5 information to a property owner:

6 (a) The physical location of the infected tree which
7 has necessitated removal and destruction of the property
8 owner's tree.

9 (b) The diagnostic report that resulted in the
10 determination that the infected tree is infected with the
11 citrus canker.

12 (c) The distance between the infected citrus tree and
13 a property owner's exposed citrus trees.

14 ~~(5)(2) In addition to the powers and duties set forth~~
15 ~~under this chapter, the department is directed to adopt rules~~
16 ~~specifying facts and circumstances that, if present, would~~
17 ~~require the destruction of plants for purposes of eradicating,~~
18 ~~controlling, or preventing the dissemination of citrus canker~~
19 ~~disease in the state. In addition, The department is directed~~
20 ~~to adopt rules regarding the conditions under which citrus~~
21 ~~plants, other than those that are infected or exposed to~~
22 ~~infection, can be grown, moved, and planted in this state as~~
23 ~~may be necessary for the eradication, control, or prevention~~
24 ~~of the dissemination of citrus canker. Such rules shall be in~~
25 ~~effect for any period during which, in the judgment of the~~
26 ~~Commissioner of Agriculture, there is the threat of the spread~~
27 ~~of citrus canker disease in the state. Such rules may provide~~
28 ~~for the conduct of any activity regulated by such rules~~
29 ~~subject to an agreement by persons wishing to engage in such~~
30 ~~activity to voluntarily destroy, at their own expense, citrus~~
31 ~~plants declared by the department to be imminently dangerous~~

1 by reason of being infected or infested with citrus canker or
2 exposed to infection and likely to communicate same. The
3 terms of such agreement may also require the destruction of
4 healthy plants under specified conditions. Any such
5 destruction shall be done after reasonable notice in a manner
6 pursuant to and under conditions set forth in the agreement.
7 Such agreements may include releases and waivers of liability
8 and may require the agreement of other persons.

9 ~~(3) The department, pursuant to s. 581.031(15) and~~
10 ~~(17), may create a citrus canker host-free buffer area,~~
11 ~~delineated by department rule, to retard the spread of citrus~~
12 ~~canker from known infected areas. In addition, the department~~
13 ~~shall develop a compensation plan for the trees removed from~~
14 ~~the buffer area. Compensation for the trees removed from the~~
15 ~~buffer area is subject to annual legislative appropriation.~~

16 (6)~~(4)~~ The department shall develop by rule, pursuant
17 to ss. 120.536(1) and 120.54, a statewide program of
18 decontamination to prevent and limit the spread of citrus
19 canker disease. Such program shall address the application of
20 decontamination procedures and practices to all citrus plants
21 and plant products, vehicles, equipment, machinery, tools,
22 objects, and persons who could in any way spread or aid in the
23 spreading of citrus canker in this state. In order to prevent
24 contamination of soil and water, such rules shall be developed
25 in consultation with the Department of Environmental
26 Protection. The department may develop compliance and other
27 agreements which it determines can aid in the carrying out of
28 the purposes of this section, and enter into such agreements
29 with any person or entity.

30 (7)~~(5)~~ Owners and/or operators of nonproduction
31 vehicles and equipment shall follow the department guidelines

1 for citrus canker decontamination effective June 15, 2000.
2 The department shall publish the guidelines in the Florida
3 Administrative Weekly and on the department Internet website.
4 The guidelines shall be posted no later than May 15, 2000.

5 (8)~~(6)~~ Notwithstanding any provision of law, the
6 Department of Environmental Protection is not authorized to
7 institute proceedings against any person under the provisions
8 of s. 376.307(5) to recover any costs or damages associated
9 with contamination of soil or water, or the evaluation,
10 assessment, or remediation of contamination of soil or water,
11 including sampling, analysis, and restoration of soil or
12 potable water supplies, where the contamination of soil or
13 water is determined to be the result of a program of
14 decontamination to prevent and limit the spread of citrus
15 canker disease pursuant to rules developed under this section.
16 This subsection does not limit regulatory authority under a
17 federally delegated or approved program.

18 (9)~~(7)~~ Upon request of the department, the sheriff or
19 chief law enforcement officer of each county in the state
20 shall provide assistance in obtaining access to private
21 property for the purpose of enforcing the provisions of this
22 section. The sheriff or chief law enforcement officer shall be
23 responsible for maintaining public order during the
24 eradication process and protecting the safety of department
25 employees, representatives, and agents charged with
26 implementing and enforcing the provisions of this section. The
27 department may reimburse the sheriff or chief law enforcement
28 officer for the reasonable costs of implementing the
29 provisions of this subsection.

30 (10)~~(8)~~ Posting of an order on the property on which
31 citrus trees are to be cut pursuant to the citrus canker

1 eradication program shall meet the notice requirement of s.
2 120.569(1).

3 Section 2. Section 933.02, Florida Statutes, is
4 amended to read:

5 933.02 Grounds for issuance of search warrant.--Upon
6 proper affidavits being made, a search warrant may be issued
7 under the provisions of this chapter upon any of the following
8 grounds:

9 (1) When the property shall have been stolen or
10 embezzled in violation of law;

11 (2) When any property shall have been used:

12 (a) As a means to commit any crime,

13 (b) In connection with gambling, gambling implements
14 and appliances, or

15 (c) In violation of s. 847.011 or other laws in
16 reference to obscene prints and literature;

17 (3) When any property constitutes evidence relevant to
18 proving that a felony has been committed;

19 (4) When any property is being held or possessed:

20 (a) In violation of any of the laws prohibiting the
21 manufacture, sale, and transportation of intoxicating liquors,
22 or

23 (b) In violation of the fish and game laws, or

24 (c) In violation of the laws relative to food and
25 drug, ~~or~~

26 (d) In violation of a quarantine for citrus canker
27 pursuant to s. 581.184, or

28 (e) Which may be inspected, treated, seized, or
29 destroyed pursuant to s. 581.184; or

30 (5) When the laws in relation to cruelty to animals
31 have been or are violated in any particular building or place,

1 but no search shall be made in such building or place after
2 sunset, unless specially authorized by the officer issuing the
3 warrant upon satisfactory cause shown; in which case such
4 property may be taken on the warrant so issued from any house
5 or place in which it is concealed, or from any vehicle,
6 aircraft, or watercraft in which it may be found, or from the
7 possession of any person by whom it shall have been used in
8 the commission of any offense or from any person in whose
9 possession it may be.

10
11 The provisions of this section shall apply also to any papers
12 or documents used as a means of or in aid of the commission of
13 any offense against the laws of the state.

14 Section 3. Section 933.07, Florida Statutes, is
15 amended to read:

16 933.07 Issuance of search warrants.--

17 (1) The judge, upon examination of the application and
18 proofs submitted, if satisfied that probable cause exists for
19 the issuing of the search warrant, shall thereupon issue a
20 search warrant signed by him or her with his or her name of
21 office, to any sheriff and the sheriff's deputies or any
22 police officer or other person authorized by law to execute
23 process, commanding the officer or person forthwith to search
24 the property described in the warrant or the person named, for
25 the property specified, and to bring the property and any
26 person arrested in connection therewith before the magistrate
27 or some other court having jurisdiction of the offense.

28 (2) Notwithstanding any other provisions of this
29 chapter, the Department of Agriculture and Consumer Services,
30 based on grounds specified in s. 933.02(4)(d) or (e), may
31 obtain a search warrant authorized by this chapter for an area

1 in size up to and including the full extent of the county in
2 which the search warrant is issued. The judge issuing such
3 search warrant shall conduct a court proceeding prior to the
4 issuance of such search warrant upon reasonable notice and
5 shall receive, hear, and determine any objections by property
6 owners to the issuance of such search warrant. Such search
7 warrant may be served by employees or authorized contractors
8 of the Department of Agriculture and Consumer Services. Such
9 search warrant may be made returnable at any time up to 6
10 months from the date of issuance.

11 Section 4. Effective July 1, 2005, section
12 581.184(1)(b), Florida Statutes, is repealed and shall be
13 reviewed by the Legislature prior to that date.

14 Section 5. Except as otherwise provided in this act,
15 this act shall take effect upon becoming a law.

16
17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 COMMITTEE SUBSTITUTE FOR
19 Senate Bill 1926

- 20 - The bill amended s. 933.07, F.S., to provide a mechanism
21 for issuance of a search warrant to search for citrus
22 trees infected with or exposed to citrus canker, and
23 required a public hearing prior to issuance. The CS
24 provides for a court proceeding rather than a public
25 hearing.
- 26 - The bill did not amend s. 581.184, F.S. The CS amends s.
27 581.184, F.S., to authorize the department to remove and
28 destroy all citrus trees located within 1900 feet of a
29 citrus tree that is infected with citrus canker. It
30 provides for issuance of an immediate final order
31 authorizing destruction of the trees, for an appeal
procedure, and for the property owner to be given
information about the infected tree that requires
destruction of the exposed trees.